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11 Attorneys for Plaintiff BY *M. Fischer* CLERK U S DISTRICT COURT
12 DEPUTY DISTRICT OF ARIZONA

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 United States of America,

16 No. CR-20-106-PHX-MHB

17 Plaintiff,

18 vs.

19 PLEA AGREEMENT

20 Michael Francis Weinberger,

21 Defendant.

22 Plaintiff, United States of America, and the defendant, Michael Francis Weinberger,
23 hereby agree to dispose of this matter on the following terms and conditions:

24 1. **PLEA**

25 The defendant will plead guilty to an Information charging the defendant with a
26 violation of 18 United States Code (U.S.C.) § 1163, Theft from Indian Tribal
27 Organizations, a Class A misdemeanor offense.

28 2. **MAXIMUM PENALTIES**

29 a. A violation of 18 U.S.C. § 1163, is punishable by a maximum fine of
30 \$100,000, a maximum term of imprisonment of one year, or both, and a term of supervised
31 release of up to one year. A maximum term of probation is five years.

32 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
33 Reform Act of 1984, the Court shall order the defendant to:

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4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

9 (4) pay upon conviction a \$25 special assessment for each count to which
10 the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 c. The Court is required to consider the Sentencing Guidelines in determining
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
15 the Court accepts.

16 | 3. **STIPULATIONS REGARDING SENTENCING**

17 Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
18 stipulate that:

19 a. Sentence. Defendant shall be sentenced to a term of probation.

20 b. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
21 specifically agrees to pay full restitution in the amount of \$8,053.25, to all victims directly
22 or proximately harmed by the defendant’s “relevant conduct,” including conduct pertaining
23 to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless
24 of whether such conduct constitutes an “offense” under 18 U.S.C. §§ 2259, 3663 or 3663A.
25 The defendant understands that such restitution will be included in the Court’s Order of
26 Judgment and that an unanticipated restitution amount will not serve as grounds to
27 withdraw the defendant’s guilty plea or to withdraw from this plea agreement.

28 c. Assets and Financial Responsibility. The defendant shall make a full

1 accounting of all assets in which the defendant has any legal or equitable interest. The
2 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
3 transfer any such assets or property before sentencing, without the prior approval of the
4 United States (provided, however, that no prior approval will be required for routine, day-
5 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
6 Office to immediately obtain a credit report as to the defendant in order to evaluate the
7 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
8 also shall make full disclosure of all current and projected assets to the U.S. Probation
9 Office immediately and prior to the termination of the defendant's probation, such
10 disclosures to be shared with the U.S. Attorney's Office, including the Financial Litigation
11 Unit, for any purpose.

12 **4. RECOMMENDATIONS REGARDING SENTENCING**

13 a. Acceptance of Responsibility. If the defendant makes full and complete
14 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
15 commission of the offense, and if the defendant demonstrates an acceptance of
16 responsibility for this offense up to and including the time of sentencing, the United States
17 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
18 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
19 the United States will move the Court for an additional one-level reduction in the applicable
20 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

21 b. Non-Binding Recommendations. The defendant understands that
22 recommendations are not binding on the Court. The defendant further understands that the
23 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
24 recommendation.

25 **5. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

26 a. This office shall not prosecute the defendant for any offenses committed by
27 the defendant, and known by the United States, in connection with Defendant's conduct on
28 June 20, 2017, at the Talking Stick Resort and Casino.

1 b. This agreement does not, in any manner, restrict the actions of the United
2 States in any other district or bind any other United States Attorney's Office.

3 **6. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

4 a. If the Court, after reviewing this plea agreement, concludes that any
5 provision contained herein is inappropriate, it may reject the plea agreement and give the
6 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
7 11(c)(5).

8 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
9 vacated, or reversed at any time, this agreement shall be null and void, the United States
10 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
11 any charges that have been dismissed because of this plea agreement shall automatically
12 be reinstated. In such event, the defendant waives any and all objections, motions, and
13 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
14 restrictions in bringing later charges or proceedings. The defendant understands that any
15 statements made at the time of the defendant's change of plea or sentencing may be used
16 against the defendant in any subsequent hearing, trial, or proceeding subject to the
17 limitations of Fed. R. Evid. 410.

18 **7. WAIVER OF DEFENSES AND APPEAL RIGHTS**

19 The defendant waives (1) any and all motions, defenses, probable cause
20 determinations, and objections that the defendant could assert to the indictment or
21 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
22 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
23 judgment against the defendant, or any aspect of the defendant's sentence, including the
24 manner in which the sentence is determined, including but not limited to any appeals under
25 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
26 (habeas petitions), and any right to file a motion for modification of sentence, including
27 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
28 collateral attack, or other motion the defendant might file challenging the conviction, order

1 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
2 bar an otherwise-preserved claim of ineffective assistance of counsel or of “prosecutorial
3 misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

4 **8. DISCLOSURE OF INFORMATION**

5 a. The United States retains the unrestricted right to provide information and
6 make any and all statements it deems appropriate to the U.S. Probation Office and to the
7 Court in connection with the case.

8 b. Any information, statements, documents, and evidence that the defendant
9 provides to the United States pursuant to this agreement may be used against the defendant
10 at any time.

11 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
12 cooperation shall include providing complete and truthful responses to questions posed by
13 the U.S. Probation Office including, but not limited to, questions relating to:

14 (1) criminal convictions, history of drug abuse, and mental illness; and
15 (2) financial information, including present financial assets or liabilities
16 that relate to the ability of the defendant to pay a fine or restitution.

17 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

18 Nothing in this agreement shall be construed to protect the defendant from
19 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
20 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
21 monetary penalties, including restitution imposed by the Court, shall be due immediately
22 upon judgment, shall be subject to immediate enforcement by the United States, and shall
23 be submitted to the Treasury Offset Program so that any federal payment or transfer of
24 returned property the defendant receives may be offset and applied to federal debts (which
25 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
26 payments, the schedule of payments shall be merely a schedule of minimum payments and
27 shall not be a limitation on the methods available to the United States to enforce the
28 judgment.

10. ELEMENTS

Embezzlement and Theft from Indian Tribal Organizations

On or about June 20, 2017, in the District of Arizona:

1. Defendant knowingly converted to his use or the use of another,
2. Goods, assets, or other property valued at \$1,000 or less, that
4. Belonged to an Indian tribal organization or had been entrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization.

11. FACTUAL BASIS

The defendant admits that the following facts are true and that if this matter were to proceed to trial the United States could prove the following facts beyond a reasonable doubt:

On June 20, 2017, at the Talking Stick Resort and Casino, located within the boundaries of the Salt River Pima Maricopa Indian Community, Maricopa County, Defendant purposefully pulled down a display case that resulted in the destruction of the case and the Indian artifacts within the case. The cultural display case was located in the lobby of the Talking Stick Resort and Casino. The value of one of the Indian artifacts that was destroyed by Defendant was \$675.

The defendant shall swear under oath to the accuracy of this statement and, if the defendant should be called upon to testify about this matter in the future, any intentional material inconsistencies in the defendant's testimony may subject the defendant to additional penalties for perjury or false swearing, which may be enforced by the United States under this agreement.

APPROVAL AND ACCEPTANCE OF THE DEFENDANT

I have read the entire plea agreement with the assistance of my attorney. I understand each of its provisions and I voluntarily agree to it.

25 I have discussed the case and my constitutional and other rights with my attorney.
26 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
27 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
28 present evidence in my defense, to remain silent and refuse to be a witness against myself

1 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
2 to be presumed innocent until proven guilty beyond a reasonable doubt.

3 I agree to enter my guilty plea as indicated above on the terms and conditions set
4 forth in this agreement.

5 I have been advised by my attorney of the nature of the charges to which I am
6 entering my guilty plea. I have further been advised by my attorney of the nature and range
7 of the possible sentence and that my ultimate sentence shall be determined by the Court
8 after consideration of the advisory Sentencing Guidelines.

9 My guilty plea is not the result of force, threats, assurances, or promises, other than
10 the promises contained in this agreement. I voluntarily agree to the provisions of this
11 agreement and I agree to be bound according to its provisions.

12 I understand that if I am granted probation or placed on supervised release by the
13 Court, the terms and conditions of such probation/supervised release are subject to
14 modification at any time. I further understand that if I violate any of the conditions of my
15 probation/supervised release, my probation/supervised release may be revoked and upon
16 such revocation, notwithstanding any other provision of this agreement, I may be required
17 to serve a term of imprisonment or my sentence otherwise may be altered.

18 This written plea agreement, and any written addenda filed as attachments to this
19 plea agreement, contain all the terms and conditions of the plea. Any additional
20 agreements, if any such agreements exist, shall be recorded in a separate document and
21 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
22 be in the public record.

23 I further agree that promises, including any predictions as to the Sentencing
24 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
25 (including my attorney) that are not contained within this written plea agreement, are null
26 and void and have no force and effect.

27 I am satisfied that my defense attorney has represented me in a competent manner.
28

1 I fully understand the terms and conditions of this plea agreement. I am not now
2 using or under the influence of any drug, medication, liquor, or other intoxicant or
3 depressant that would impair my ability to fully understand the terms and conditions of this
4 plea agreement.

5 01/21/2020
6 Date

Michael F. Weinberger

MICHAEL FRANCIS WEINBERGER
Defendant

8 **APPROVAL OF DEFENSE COUNSEL**

9 I have discussed this case and the plea agreement with my client in detail and have
10 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
11 constitutional and other rights of an accused, the factual basis for and the nature of the
12 offense to which the guilty plea will be entered, possible defenses, and the consequences
13 of the guilty plea including the maximum statutory sentence possible. I have further
14 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
15 assurances, promises, or representations have been given to me or to the defendant by the
16 United States or any of its representatives that are not contained in this written agreement.
17 I concur in the entry of the plea as indicated above and that the terms and conditions set
18 forth in this agreement are in the best interests of my client. I agree to make a bona fide
19 effort to ensure that the guilty plea is entered in accordance with all the requirements of
20 Fed. R. Crim. P. 11.

21 1/23/2020
22 Date

MH 023269

MELISSA HO
Attorney for Defendant

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APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

**MICHAEL BAILEY
United States Attorney
District of Arizona**

Date

Date

ANDREW C. STONE
Assistant U.S. Attorney

and C-~~A~~

ACCEPTANCE BY THE COURT

Date

HONORABLE MICHELLE H. BURNS
UNITED STATES MAGISTRATE JUDGE